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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,877	02/27/2004	Michael A. Poteet	006417.00002	7122
22909	7590	05/03/2006	EXAMINER	
BANNER & WITCOFF, LTD. 1001 G STREET, N.W. WASHINGTON, DC 20001-4597			GOODMAN, CHARLES	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 05/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/788,877

Applicant(s)

POTEET, MICHAEL A.

Examiner

Charles Goodman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 33-35 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☒ Claim(s) 9, 19 and 29 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

### **DETAILED ACTION**

1. The indicated allowability of claims 1-35 is withdrawn in view of the newly discovered reference(s) to Maultasch et al (US 5,480,031), Plauda (US 3,798,702) and Faehnel (US 2,506,862). Rejections based on the newly cited reference(s) follow.
2. It is noted that the current application is in response to the Withdrawal From Issue noticed mailed on February 12, 2006.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 10 and 12-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Maultasch et al.

Maultasch et al discloses a combined pizza box lid support and cutter comprising all the elements claimed including, inter alia, a handle (e.g. 28) having an elongate configuration that defines a pair of ends and a longitudinal axis extending through the ends; a single attachment arm (note 28 in the Figures) extending beyond one of the ends of the handle; the end area of the arm incorporating a "first part" (e.g. 30) of an attachment mechanism such that a rotation axis is defined perpendicular to the longitudinal axis; and a head portion (e.g. 12) rotatable as claimed wherein the attachment arm attaches to only the second side of the head portion and is absent from

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the first side of the head portion - compare Figs. 1-2 in which Fig. 1 is analogous to the first side and Fig. 2 is analogous to the second side.

Regarding claim 2 and similar, the release mechanism is read on the “clipping” aspect of the attachment arm shown in Maultasch et al.

Regarding, claim 3 and similar, the “actuator” is read on the upturned portions of (30) - note to the left of reference (30) in Fig. 3 wherein the actuator is incorporated into the handle by virtue of the integral nature of the same therewith; and the “connector” is read on the arcuate portion of projections (30) in Maultasch et al.

Regarding claim 4 and similar, the head portion of Maultasch et al is inherently interchangeable whenever the current head portion is replaced with another one, thereby reading on the “alternate” limitation of the claim.

Regarding claim 10, the two different functions are the “head portion” cuts while the handle includes a device, i.e. the gripping area, to hold the overall device for pushing and pulling.

5. Claims 30-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Plauda or Faehnel.

Plauda teaches a mechanical action paint remover comprising all the elements claimed including, inter alia, a handle (e.g. 16) having an elongate configuration; and a head portion (e.g. at 26 in the Figures) including a plurality of outwardly extending projections (e.g. 30) obviously having a height dimension and an axis extending outwardly from the head and height dimension with at least one of the projections having a configuration that is twisted about the axis.

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Regarding the intended use of the device as a "culinary" implement, this has been considered, but it is deemed that Plauda's device is clearly capable of use in the intended manner and structurally meets the limitations set forth in the claim. See e.g. MPEP § 2111, 2112.

Similar analysis is made with respect to Faehnel with respect to the handle (e.g. 6) and the projections (e.g. at 16-18 in Fig. 1) that are twisted.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5-7, 17, 18 and 21-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maultasch et al in view of Wallys.

Maultasch et al discloses the invention substantially as claimed except for the alternate head portion has a second width, the first width of the head portion being greater than the second due to lack of a specific example of the alternate head portion that may inherently be provided for Maultasch et al. However, Wallays teaches an implement having interchangeable head portions (e.g. 40 and 72 in Figs. 1 and 11 respectively) wherein the first width of head portion (e.g. 72) is greater than the width of the alternate head portion (e.g. 40) due to the design and different functions of the head portions. Wallys teachings seem to suggest greater utility of an implement similar to

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Maultasch et al by allowing replaceable mounting of different head portions for different purposes. Thus, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the device of Maultasch et al with head portions of different widths as taught and suggested by Wallys in order to expand the utility of Maultasch et al device for the reasons stated supra.

Regarding claim 7, the “depression” is defined by the valley between the tab (26) and the surface of knife (16).

8. Claims 8, 11 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maultasch et al in view of Wallys and Faehnel.

Maultasch et al discloses the invention substantially as claimed except for a plurality of projections. However, Wallys teaches a similar device wherein a differently designed head portion (compare 40 and 72 in Figs. 1 and 11) may be used on a single attachable handle to thereby perform different functions, e.g. cutting and/or curvilinear scoring, with the same device; thus increasing the utility of the same. Note that the head portion shown in Fig. 11 of Wallys has projection-like aspects due to the scalloped design. In the same vein, Faehnel teaches a meat tenderizer in which the head portion (e.g. 16-18) has projections (14) of a height dimension and twisted in configuration for the purpose of tenderizing the food. Thus, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the device of Maultasch et al with alternate head portions with the alternate have a the plurality of projections as taught and suggested by Wallys and Faehnel combined in order to facilitate increased functionality to Maultasch et al's device vis-à-vis the tenderizer alternate head configuration.

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***Allowable Subject Matter***

9. Claims 33-35 are allowed.
10. Claims 9, 19, and 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Goodman whose telephone number is (571) 272-4508. The examiner can normally be reached on Monday-Thursday between 7:30 AM to 6:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap, can be reached on (571) 272-4514. In lieu of mailing, it is encouraged that all formal responses be faxed to **(571) 273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).



**Charles Goodman  
Primary Examiner**

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*CH*  
April 27, 2006

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CHARLES GO  
MARY E